

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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RICHARD LEWIS,

Plaintiff,

v.

MICHAEL STEPHEN,  
THEODRE ANDERSON, and  
BRYAN GERRY,

Defendants.

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ORDER

15-cv-051-jdp

The court received plaintiff Richard Lewis's Rule 26(a)(3) disclosure on January 17, 2017. Dkt. 67. Lewis lists four "requested witnesses," who are correctional officers at the Columbia Correctional Institution: Theodore Anderson, "C.O. Bryan," "C.O. Gerry," and Andrew Miller. Dkt. 67. I take "C.O. Bryan" and "C.O. Gerry" to be the same person named in Lewis's complaint, Bryan Gerry, Dkt. 1, at 2.

Lewis does not indicate that these witnesses agreed to testify at trial without a subpoena or that he requests for subpoenas as to these witnesses. I explained in the trial preparation order that if Lewis wishes to call unincarcerated witnesses to testify at trial, he needs to either get the witnesses to testify voluntarily or request subpoenas for those witnesses. Dkt. 52, at 5. I also explained that Lewis cannot expect defendants to be present at the trial and that if he wishes to call defendants to testify, he must follow the same procedure for calling unincarcerated witnesses. *Id.* These procedures were also included in the pretrial conference order. Dkt. 16, at 40-3.

I remind Lewis that it is his task to arrange his witnesses to attend the trial. If these witnesses do not agree to voluntarily appear, then Lewis needs to request subpoenas,

following the procedures provided in the trial preparation order, Dkt. 52, at 5-6, and the pretrial conference order, Dkt. 16, at 40-43. The deadline for requesting a subpoena was January 13, 2017, Dkt. 52, at 12, and Dkt. 16, at 42-43, but I will extend the deadline to January 25, 2017. Should those witnesses not agree to testify voluntarily, and if Lewis wants to subpoena any of them, he must send this court a request for subpoenas by January 25.

Note that if the court grants Lewis's request for subpoenas, Lewis must be prepared to tender the fees for the witnesses' attendance: a daily witness fee (\$40 per day per witness) and the witness's mileage costs (\$0.535 per mile). Assuming each witness would be traveling from Portage, the total cost for each witness for one day would be around \$57 per witness. Also, if the witness's attendance is required for more than one trial day, an allowance for a room and meals (\$174 per day) must be paid. Lewis must be prepared to arrange for the appropriate amount of funds to be delivered to either the Marshal or this court by January 30, so that the Marshal can serve each witness with a subpoena and the fees. If the funds are coming from Lewis's trust fund account, I expect prison officials to work with Lewis to withdraw the funds.

I note that Lewis had only \$48.50 in his prisoner trust account at the beginning of this case. Dkt. 3, at 2. Perhaps he has other funds available to pay for these witnesses. In any event, as stated in the trial preparation order and pretrial conference order, it is Lewis's responsibility to pay for subpoenaed witnesses. The ideal situation for Lewis is that he obtains agreements from these witnesses to testify voluntarily.

ORDER

IT IS ORDERED that plaintiff Richard Lewis's deadline to file his request for subpoenas is extended to January 25, 2017.

Entered January 19, 2017.

BY THE COURT:

/s/

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JAMES D. PETERSON  
District Judge